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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BRIEF UNDER 37 C.F.R. § 1.192**

20 Honorable Commissioner for Patents  
Alexandria, Virginia 22313

Sir:

## Real Party In Interest

The real party in interest is Motorola Inc., by virtue of an assignment executed by the named inventor(s) and duly recorded in the United States Patent & Trademark Office.

## **Related Appeals and Interferences**

35 There are no related appeals or interferences.

REED  
"Rotational Function Selectors In  
Communication Handset And Methods Therefor"  
Atty. Docket No. CS11387

Appeal Brief Under 37 CFR 1.192  
Appl. No. 10/036,839  
Confirm. No. 4946  
Examiner L. Le, Art Unit 2685

### Status of Claims

Claims 1-21 are pending. Claims 1-9 stand allowed. Claims 13-17  
were indicated as being allowable. No claims have been canceled or  
5 withdrawn. A copy of the claims pending on appeal appears in Appendix A.

Claims 10-12 and 18-21 stand twice rejected in the final Office  
Action mailed on 24 September 2003.

Claims 10-12 and 18-21 are the subject of the instant appeal.

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### Status of Amendments

No amendments have been filed subsequent to the mailing of the  
final Office Action on 24 September 2003.

15

### Summary of Disclosure

The inventions are drawn generally to communication devices, for  
example, wireless communications handsets, having first and second rotatably  
coupled housing portions, for example, blade and body portions rotatable in  
20 substantially parallel planes, and methods therein. Instant Specification, page  
3, lines 3-15, FIGs. 1, 3, 4 & 7.

Generally, the wireless communication handset performs  
functions when the first and second housing portions are rotated to  
corresponding angular configurations associated with the function performed.  
25 In one embodiment, for example, the wireless communication handset

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5 performs a particular function, for example, flash, mute, application shortcuts, etc. when the first and second housing portions are rotated to a corresponding angular configuration between first and second angular configurations associated with standby and call functions, respectively. In one particular embodiment, the communication handset transitions from one mode of operation, e.g., a stand-by mode, to another mode of operation, e.g., active mode, upon or by rotating a blade portion relative to a housing, and another function of the communication handset is invoked by rotating the blade to a corresponding position different than the active and standby mode positions.

10 These and other aspects of the disclosure are discussed more fully the corresponding specification on page 2, line 3 – page 16, line 11 and illustrated in FIGs. 1-10.

### Issues for Consideration on Appeal

15

Whether Claims 10-12 and 18-21 are patentable over US 6,115,620 (Colona) and FR 2,679,086 (Courtecuisse) under 35 USC 103(a).

### Grouping of Claims

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Claims 10-11 and 18-21 do not stand or fall together regarding the rejections thereof under 35 U.S.C. 103(a). The separate bases for the patentability of the appealed claims are discussed below. Claim 12 stands or falls with Claim 10.

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### Discussion Independent Claim 10

#### Summary of Examiner's Rejection

5           Claim 10 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

10           Regarding Claim 10, the Examiner concedes that Colonna "... fails to disclose ... the first and second housing portions rotatable in corresponding first and second substantially parallel planes." Office Action, 24 October 2003, para. 1. The Examiner relies upon Courtecuisse however to support the allegation that it would have been obvious to "... substitute the flip cover of Colonna et al with the rotating housing element of Courtecuisse...." Id.

#### Argument for Patentability of Independent Claim 10

15           Regarding original Claim 10, Colonna or Courtecuisse fail to suggest a

20           ... wireless communication handset, comprising:  
                  first and second rotatably coupled housing portions,  
                  the first and second housing portions rotatable in corresponding first and second substantially parallel planes;  
                  the wireless communication handset in a standby mode when the first and second housing portions are rotated to a standby angular configuration,  
                  the wireless communication handset in a call mode when the first and second housing portions are rotated from the standby angular configuration to a call angular configuration,  
                  the wireless communication handset performing a first function when the first and second housing portions are rotated to

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a first function angular configuration between the standby and call angular configurations.

Contrary to the Examiner's assertion, Colonna fails to disclose first and second housing portions having a first function angular configuration between standby and call angular configurations wherein the wireless communication handset performs ".... a first function when the first and second housing portions are rotated to a first function angular configuration between the standby and call angular configurations" as recited in Claim 10.

5 The device of Colonna only operates in speakerphone mode upon toggling activation button (230) or upon the EM sensor (116) detecting a magnetic field (Colonna, col. 4, lines 44-65, col. 6, line 30-34, col. 15, lines 6-14. and FIG. 3). In Colonna, operation of speakerphone mode is controlled by button (230) or sensor (116), not by the configuration of the housing.

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15 Contrary to the Examiner's contention, there is no suggestion to replace the flip cover of Colonna with the rotatable blade of Courtecuisse. The absence of offering any reasoning or motivation behind the Examiner's putative modification of Colonna and combination with Courtecuisse suggests that the modification/combination is motivated only by hindsight, a practice admonished repeatedly by the Board of Patent Appeals and Interferences (BPAI).

20

25 Also, the asserted replacement of the flip portion (204) of Colonna with the rotatable blade (28) of Courtecuisse would likely be inoperable. Colonna only operates in speakerphone mode when the housing is configured in a manner that prevents location of the device too near the users ear. Colonna, col. 15, lines 6-14 with reference to FIG. 3. The use of the rotatable

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blade of Courtecuisse in the device of Colonna is contrary to Colonna's object of providing a housing configuration (illustrated in FIG. 3 of Colonna) that prevents use of the device too near the user's ear in speakerphone mode. The rotatable blade of Courtecuisse would not prevent placement of the modified phone near the user's ear in speakerphone mode. Therefore, one skilled in the art would not be motivated to modify Colonna with Courtecuisse as asserted by the Examiner. Claim 10 and the claims that depend therefrom are thus 5 patentably distinguished over Colonna and Courtecuisse.

10 Discussion Dependent Claim 11

Summary of Examiner's Rejection

15 Claim 11 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

20 Regarding Claim 11, the Examiner asserts that Colonna discloses "...performing a second active mode function when the first and second housing portions are rotated to a second angular configuration between the standby [sic; and] call configurations."

Argument for Patentability of Claim 11

25 Contrary to the Examiner's assertion, Colonna discloses no more than three (3) operating modes: private-active; speakerphone, and standby. The Examiner's reference to col. 4, lines 5-15 of Colonna is misplaced. The

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referenced passage of Colonna discusses only alternative positions for private-mode operation. Thus Colonna and Courtecuisse fail to suggest the wireless communication handset of Claim 10, wherein

5 ... the wireless communication handset performing a second active mode function when the first and second housing portions are rotated to a second angular configuration between the standby and call angular configurations.

10 Claim 11 is therefore further patentably distinguished over Colonna and  
Courtesuisse.

## Discussion Independent Claim 18

**15      Summary of Examiner's Rejection**

Claim 18 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

20                   Regarding Claim 18, the Examiner contends that Colonna discloses, among other limitations of Claim 18, "... invoking a first function of the communication handset by flipping the cover to a position different than the active mode and standby mode positions." Id. at page 4.

25 The Examiner concedes that Colonna fail to disclose a "... blade rotatably [sic; rotatable] in a plane relative to the housing", but asserts that it would have been obvious to "... substitute the flip cover of Colonna et al. with

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the rotating housing element or any rotating blade/cover of Courtecuisse ...."  
Id. at page 4.

Argument for Patentability of independent Claim 18

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Regarding original Claim 18, Colonna or Courtecuisse fail to suggest a

... method in a communication handset having a blade rotatably coupled to a housing, comprising:

10 transitioning the communication handset from a stand-by operating mode to an active operating mode by rotating the blade in a plane relative to the housing from a standby mode position to an active mode position;

15 invoking a first function of the communication handset by rotating the blade to a first position different than the active mode and standby mode positions;

transitioning the communication handset to the stand-by mode by rotating the blade to the standby mode position from some other position.

20

Contrary to the Examiner's assertion, Colonna does not invoke "... a first function of the communication handset by rotating the blade to a first position different than the active mode and standby mode positions...." In Colonna, the activation switch (230) must be toggled or the EM sensor (116) must sense a magnetic field before operating in the speakerphone mode. Colonna, col. 4, lines 44-65, col. 6, line 30-34, col. 15, lines 6-14. In Colonna, positioning of the flip cover alone will not enable or invoke speakerphone mode.

30 Also, there is no suggestion to replace the flip cover of Colonna with the blade of Courtecuisse, since the asserted replacement of the flip

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portion (204) of Colonna with the rotatable blade (28) of Courtecuisse obstruct Colonna's object of providing a housing configuration (illustrated in FIG. 3 of Colonna) that prevents use of the device too near the user's ear in speakerphone mode. The rotatable blade of Courtecuisse would not prevent place of the modified phone near the user's ear in speakerphone mode. Therefore, one skilled in the art would not be motivated to modify Colonna with Courtecuisse as asserted by the Examiner. Claim 18 and the claims that depend therefrom are thus patentably distinguished over Colonna and Courtecuisse.

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### Discussion Dependent Claim 19

#### Summary of Examiner's Rejection

15 Claim 19 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

20 Regarding Claim 19, the Examiner asserts that Colonna discloses "... invoking a second function of the communication handset by flipping the housing element 204 to a second position ...." Id. at page 4.

#### Argument for Patentability of Claim 19

25 Contrary to the Examiner's assertion, Colonna disclose no more than three operating modes: private-active; speakerphone, and standby. The Examiner's reference to col. 4, lines 5-15 of Colonna is misplaced. The

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referenced passage of Colonna discusses only alternative positions for private-mode operation. Thus Colonna and Courtecuisse fail to suggest the method of Claim 18, including

5                   ... invoking a second function of the communication handset by rotating the blade to a second position.

In Colonna, the flip does not invoke any function other than private mode and standby mode. The activation button must be activated or the EM sensor must detect a magnetic field. Also, no reason has been established for the putative 10 modification of Colonna. Claim 19 is thus patentably distinguished over the art.

### Discussion Dependent Claim 20

#### 15                   Summary of Examiner's Rejection

Claim 20 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

20                   Regarding Claim 20, the Examiner asserts that Colonna discloses "... indicating the position of the housing element relative to the housing by providing a physical sensation when the blade/housing element 204 is in the respective positions." Id. at page 4.

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Argument for Patentability of Claim 20

Contrary to the Examiner's assertion, Colonna does not disclose or suggest in combination with the limitations of Claim 18,

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... indicating the position of the blade relative to the housing by providing a physical sensation when the blade is the respective positions.

10 The Examiner's reference to the passage at col. 6, lines 30-33 of Colonna is misplaced. The passage in Colonna referenced by the Examiner discusses toggling the activation element (203) to switch operation of speakerphone mode. Claim 20 is thus patentably distinguished over the art.

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Discussion Independent Claim 21

Summary of Examiner's Rejection

20 Claim 21 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,115,620 (Colonna) in view of FR 2,679,086 (Courtecuisse). Office Action, 24 October 2003, para. 1.

25 Regarding Claim 21, the Examiner asserts that Colonna discloses "... first ... second ... [and] third operating mode[s] ..." when the first and second housing portions are rotated to a first second and third configurations. Office Action, 24 October 2003, para. 1, at page 1. The Examiner concedes that Colonna "... fails to disclose ... first and second rotatably coupled housing portions." Id. at page 5. The Examiner relies upon Courtecuisse to support the

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allegation that it would have been obvious to "... substitute the flip cover of Colonna et al with the rotating housing element of Courtecuisse in order to gain access to more functions by circularizing around a wider range of angles ... instead of just 180 degrees." Id.

5

Argument for Patentability of Claim 21

Regarding Claim 21, Colonna and Courtesuisse does not disclose or suggest a

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... wireless communication handset, comprising:  
first and second rotatably coupled housing portions,  
the first and second housing portions rotatable in  
corresponding first and second substantially parallel planes;

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the wireless communications handset in a first operating mode when the first and second housing portions are rotated to a first angular configuration,

20

the wireless communications handset in a second operating mode when the first and second housing portions are rotated to a second angular configuration,

the wireless communications handset in a third operating mode when the first and second housing portions are rotated to a third angular configuration.

25

Contrary to the Examiner's assertion, Colonna does not disclose operating in three different modes when the first and second housing portions are rotated to corresponding first, second, and third configurations. In Colonna, configuration of the housing portions enables only two modes of operation: private mode and standby mode. The speakerphone (third) mode of operation in Colonna requires either that switch (230) be toggled or that EM

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sensor (116) sense a magnetic field, before operating in the speakerphone mode. Colonna, col. 4, lines 44-65, col. 6, line 30-34, col. 15, lines 6-14. In Colonna, positioning of the flip cover to the position illustrated in FIG. 3 will not enable or invoke speakerphone mode.

5                   Also, there is no suggestion to replace the flip cover of Colonna with the blade of Courtecuisse, since the asserted replacement of the flip portion (204) of Colonna with the rotatable blade (28) of Courtecuisse obstruct Colonna's object of providing a housing configuration (illustrated in FIG. 3 of Colonna) that prevents use of the device too near the user's ear in speakerphone mode. The rotatable blade of Courtecuisse would not prevent place of the modified phone near the user's ear in speakerphone mode. Therefore, one skilled in the art would not be motivated to modify Colonna with Courtecuisse as asserted by the Examiner. Claim 21 and the claims that depend therefrom are thus patentably distinguished over Colonna and Courtecuisse.

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Prayer for Relief

Kindly reverse and vacate the rejections of Claims in view of the  
discussion above, with instructions for the Examiner to allow said Claims to  
issue in a United States Patent without further delay.

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Respectfully submitted,

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CLAIMS PENDING ON APPEAL

1. (Original) A wireless communication handset, comprising:

5 a housing;  
a blade rotatably coupled to the housing, the blade rotatable in a  
plane;  
a rotary encoder having a first encoder portion coupled to the  
blade and a stationary encoder portion,  
10 the rotary encoder having a first active mode function output  
when the blade is in the first position,  
the rotary encoder having a second active mode function output  
when the blade is in the second position.

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2. (Original) The wireless communication handset of Claim 1, the  
wireless communication handset performing a first active mode function in  
response to the first handset active mode function output of the rotary  
encoder, the wireless communication handset performing a second active  
20 mode function in response to the second active mode function output of the  
rotary encoder.

25 3. (Original) The wireless communication handset of Claim 2, the  
first active mode function of the wireless communication handset is a flash

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function, the second function of the wireless communication handset is a mute function.

5           4. (Original) The wireless communication handset of Claim 1, a processor coupled to the rotary encoder, an audio output device coupled to the processor, a first audio output signal of the processor coupled to the audio output device when the blade is in the first position, a second audio output signal of the processor coupled to the audio output device when the blade is in  
10           the second position.

15           5. (Original) The wireless communication handset of Claim 1, a processor coupled to the rotary encoder, a tactile output device coupled to the processor, a first tactile output signal of the processor coupled to the tactile output device when the blade is in the first position, a second tactile output signal of the processor coupled to the tactile output device when the blade is in  
20           the second position.

25           6. (Original) The wireless communication handset of Claim 1, first and second blade position indexing members disposed on the housing in alignment with the first and second positions of the blade.

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7. (Original) The wireless communication handset of Claim 1, the blade rotatable through an angular range, the first and second blade positions separated by an angle within the angular range.

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8. (Previously Amended) The wireless communication handset of Claim 1, the rotary encoder having a third active mode function output when the blade is in a third position, the rotary encoder having a standby function output when the blade is in a fourth position, the wireless communication handset performing a third active mode function in response to the third handset function output of the rotary encoder, the wireless communication handset operating in stand-by mode in response to the fourth handset function output of the rotary encoder.

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9. (Previously Amended) The wireless communication handset of Claim 8, the blade substantially overlapping the housing in the fourth position, the blade rotated approximately 180 degrees between the fourth and first positions, the third position of the blade between the first and fourth positions, the second position of the blade between the fourth and first positions substantially opposite the third position.

25 10. (Original) A wireless communication handset, comprising:

first and second rotatably coupled housing portions,

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the first and second housing portions rotatable in corresponding first and second substantially parallel planes;

the wireless communication handset in a standby mode when the first and second housing portions are rotated to a standby angular configuration,

the wireless communication handset in a call mode when the first and second housing portions are rotated from the standby angular configuration to a call angular configuration,

the wireless communication handset performing a first function when the first and second housing portions are rotated to a first function angular configuration between the standby and call angular configurations.

11. (Previously Amended) The wireless communication handset of Claim 10, the wireless communication handset performing a second active mode function when the first and second housing portions are rotated to a second angular configuration between the standby and call angular configurations.

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12. (Original) The wireless communication handset of Claim 10, the first and second housing portions are at least partially overlapping in the standby angular configuration, the first and second housing portions are separated by approximately 180 degrees when the first and second housing portions are in the call angular configuration.

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13. (Previously Amended) The wireless communication handset of  
Claim 10,

5 a rotary encoder having a first encoder portion coupled to the first  
housing portion and a second encoder portion coupled to the second housing  
portion,

the rotary encoder having a standby mode electrical output when  
the first and second housing portions are in the standby angular configuration,

the rotary encoder having a call mode electrical output when the  
first and second housing portions are in the call angular configuration,

10 the rotary encoder having a first function electrical output when  
the first and second housing portions are in the first function angular  
configuration.

15 14. (Previously Amended) The wireless communication handset of  
Claim 13,

a processor,

20 the standby mode electrical output of the rotary encoder coupled  
to the processor when the first and second housing portions are in the standby  
angular configuration,

the call mode electrical output of the rotary encoder coupled to the  
processor when the first and second housing portions are in the call angular  
configuration,

25 the first function electrical output of the rotary encoder coupled to  
the processor when the first and second housing portions are in the first  
function angular configuration.

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15. (Original) A wireless communication device operable in active and standby modes, comprising:

a housing;

a rotatable member rotatably coupled to the housing,

5 a rotary encoder having a first encoder portion coupled to the rotatable member and a stationary encoder portion;

the rotary encoder encoding a first active mode function output when the rotatable member is positioned in a first position relative to the housing and the wireless communication device is not in the standby mode,

10 the rotary encoder encoding a second active mode function output when the rotatable member is positioned in a second position relative to the housing and the wireless communication device is not in the standby mode.

15 16. (Original) The device of Claim 15, a processor, the first active mode function output of the rotary encoder coupled to the processor when the rotatable member is in the first position, the second active mode function output of the rotary encoder coupled to the processor when the rotatable member is in the second position.

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17. (Original) The device of claim 15, rotatable member position alignment members disposed on the rotatable member and the housing portion.

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18. (Original) A method in a communication handset having a blade rotatably coupled to a housing, comprising:

5 transitioning the communication handset from a stand-by operating mode to an active operating mode by rotating the blade in a plane relative to the housing from a standby mode position to an active mode position;

invoking a first function of the communication handset by rotating the blade to a first position different than the active mode and standby mode positions;

10 transitioning the communication handset to the stand-by mode by rotating the blade to the standby mode position from some other position.

15 19. (Original) The method of Claim 18, invoking a second function of the communication handset by rotating the blade to a second position.

20 20. (Previously Amended) The method of Claim 18, indicating the position of the blade relative to the housing by providing a physical sensation when the blade is the respective positions.

25 21. (Original) A wireless communication handset, comprising:  
first and second rotatably coupled housing portions,  
the first and second housing portions rotatable in corresponding first and second substantially parallel planes;

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the wireless communications handset in a first operating mode  
when the first and second housing portions are rotated to a first angular  
configuration,

5 the wireless communications handset in a second operating mode  
when the first and second housing portions are rotated to a second angular  
configuration,

the wireless communications handset in a third operating mode  
when the first and second housing portions are rotated to a third angular  
configuration.

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